Matthew D. O'Conner, WSBA 27061
Law Office Of Matthew D. O'Conner
8011 Greenwood Avenue North
Seattle, WA 98103
Tel: (206) 782-0722
Fax: (206) 783-0233

Judge: Marc L. Barreca
Chapter 7
DATE: May 27, 2011
TIME: 9:30 a.m.
LOCATION: Seattle
RESPONSE DUE: May 20, 2011

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re: Adam R. Grossman, Debtor.	IN CHAPTER SEVEN PROCEEDING No. 10-19817-MLB O'CONNER'S REPLY TO CHAPTER 7 TRUSTEE'S OBJECTION TO MOTION BY COUNSEL TO WITHDRAW AS COUNSEL FOR DEBTOR

To: The Clerk of the U.S. Bankruptcy Court for the Western District of Washington,

To: The Region 18 United States Trustee

To: Ronald Brown, Chapter 7 Trustee, &

To: Adam R. Grossman, Debtor

Matthew D. O'Conner ("O'Conner") hereby replies to the Chapter 7 Trustee Ronald G. Brown's (the "Trustee") Objection to O'Conner's Motion for an order permitting the withdrawal of O'Conner as attorney of record for Debtor.

I. Under The Facts Of This Case, O'Conner Is Allowed To Withdraw.

Whether to permit counsel to withdraw is a matter of discretion with the trial court. United States v. Carter, 560 F.3d 1107, 1113 (9th Cir. 2009). State and national rules of professional responsibility also apply, provided that they do not conflict with the Bankruptcy Code and Rules. See generally In re AFI Holding, Inc. 355 B.R. 139, 153 at n. 15, 47 Bankr.Ct.Dec. 92, Bankr. L. Rep. P 97,104, 06 Cal. Daily Op. Serv. 10,575, 2006 Daily Journal D.A.R. 15,028. 9th Cir.BAP (Cal.), 2006. California federal district courts have applied the California Rules of Professional Conduct to analyze such situations as here, i.e. to determine whether a proposed withdrawal is proper. E.g., Cal. Native Plant Soc 'y v. U.S. E.P.A., 2008 WL 4911162, *1 (N.D.Cal. Nov. 14, 2008); Elan Transdermal Ltd. v. Cygnus Therapeutic Systems, 809 F.Supp. 1383, 1387 (N.D.Cal.1992).

Washington's Rule of Professional Conduct Rule 1.16(b) holds as follows:

> (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
>
> (1) withdrawal can be accomplished without material adverse effect on the interests of the client;…
>
> (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
> (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

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> (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
> (7) other good cause for withdrawal exists.

Several of the above subsections of 1.16(b) apply in this instance.

To begin with, Debtor has obtained new counsel to assist him, a well-known bankruptcy practitioner Jeffrey Wells. Mr. Wells filed his first pleading on behalf of the Debtor on May 19, 2011 (See docket entry no. 165). Accordingly, Debtor will not be adversely prejudiced by an Order of this Court allowing O'Conner to withdraw and this withdrawal is permissible under RPC 1.16(b)(1).

O'Conner and Debtor have materially and fundamentally disagreed over what is the correct course of conduct on at least two significant issues. Accordingly, the Court should allow O'Conner to withdraw under RPC 1.16(b)(4).

Debtor has failed to pay his expenses for representation in his bankruptcy proceeding for services rendered post-conversion (from chapter 11 to chapter 7). Debtor currently owes $14,066.50 to O'Conner for post-conversion services related to Debtor's schedules and Statement of Financial Affairs and as O'Conner is a sole-proprietorship, this amount is both large and significant. Accordingly, the Court should allow O'Conner to withdraw under RPC 1.16(b)(5&6).

As a final justification for withdrawal related to the RPCs, Debtor and O'Conner on at least three occasions spent over two hours (each for a total of around 6 hours) discussing the definition of one word. Accordingly, the Court should allow O'Conner to withdraw under RPC 1.16(b)(7).

Numerous cases have held that a breakdown in the attorney-client relationship is

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grounds for permitting counsel to withdraw. See, e.g., S.E.C. v. Souza, 2010 WL 2231822, at *1 (E.D.Cal. Jun.10, 2010); Moss Landing Comm. Park LLC v. Kaiser Aluminum Corp., 2009 WL 764873, at *1–2 (N.D.Cal. 2009). See also In re Tescione, Slip Copy, 2010 WL 5375967 (Bkrtcy.D.Ariz., 2010).

O'Conner maintains that a breakdown in the attorney-client relationship between Debtor and O'Conner has occurred in this instance.

Ii. Funds Received On Behalf Of Debtor.

O'Conner currently has $11,500.00 funds held in a trust account under Debtor's name.

However, it is not clear to O'Conner, now, to whom the funds belong.

It is correct, as the Chapter 7 Trustee's Counsel, Ms. Moewes, stated in her Objection to O'Conner's Withdrawal, that, at the 341 hearing held on April 22, 2011, that O'Conner stated that he had no objection to turning over the funds to the Chapter 7 trustee.

However, at the second 341 hearing on April 29, 2011, at which Ms. Moewes was not in attendance, Debtor stated to the Chapter 7 Trustee through his counsel (O'Conner) that the two payments were paid to O'Conner to be used for O'Conner's legal fees and that the two persons who provided the funds wanted them back if they were not to be applied to O'Conner's legal fees. O'Conner at that time stated to the Chapter 7 Trustee that he (O'Conner) was not sure to whom the funds belonged.

Further, the amounts of the two cashier's checks referred to by Ms. Moewes are incorrect. There are only two cashier's check and they are both attached to her declaration. (See docket no. 169). Those are the only two cashier's checks and those add up to the

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$11,500.00 held in trust. There is no and never has been any one cashier's check for $11,500.00 as claimed in the Chapter 7 Trustee's Objection (see Trustee's Objection, page 2, lines 4-5).

Finally, the Trustee's statement is not correct that O'Conner disclosed the two cashier's checks for the first time at the 341 hearing on April 22, 2011. (See Objection of Chapter 7 Trustee, page 1, lines 27-28). O'Conner disclosed in open court (Judge Steiner's Court) the $6,000 cashier's check (the only one in existence at that time) at the conclusion of the hearing to appoint a Chapter 7 Trustee on November 12, 2010. O'Conner further disclosed the existence of both of the cashier's checks directly to both the Chapter 7 Trustee and Ms. Moewes outside of the Judge Steiner's Courtroom immediately after the hearing on the Ron Brown's Motion to convert Chapter 11 case to Chapter 7 heard on March 11, 2011.

Therefore, O'Conner having answered and addressed each of the Objections raised by the Trustee in his Objection, and,

WHEREFORE, based on the facts, statutes, and case law set forth hereinabove, the Court should grant O'Conner's Motion for an order permitting the withdrawal of O'Conner as attorney of record for Debtor.

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LAW OFFICE OF
MATTHEW D. O'CONNER
8011 GREENWOOD AVENUE NORTH
SEATTLE, WA 98103
(206) 782-0722 – Fax: (206) 783-0233

DATED this 24th day of May, 2011.

/s/ Matthew D. O'Conner

Matthew D. O'Conner, WSBA #27061
Attorney for Debtor
Law Office Of Matthew D. O'Conner
8011 Greenwood Avenue North
Seattle, WA 98103
Tel: (206) 782-0722
Fax: (206) 783-0233

Copies to:

Region 18 United States Trustee (electronic notice)

Ronald Brown, Chapter 7 Trustee (electronic notice)

Adam R. Grossman, Debtor